
(1987) 01 RAJ CK 0102
In the Rajasthan High Court
Case No : Criminal Appeal No. 387 of 1978

Dinesh Chandra and Another

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 08-01-1987

Acts Referred:

Penal Code, 1860 (IPC) — Section 395, 412

Citation : (1987) WLN 283

Hon'ble Judges : Milap Chand Jain, J

Bench : Single Bench

Judgement

Milap Chand Jain, J.—The appellants Dinesh Chandra and Jagvir Singh have been convicted of the offence u/s 412, IPC and each of them has been sentenced to six years rigorous imprisonment and to pay a fine of Rs. 500/-, in default of payment of fine to undergo simple imprisonment for two months. They have been acquitted of the offence u/s 395, Indian Penal Code.

2. The occurrences are said to have taken place on 13-1-1972 near Ajmer and the other near village Gordhanvilas, 5-6-miles away from Udaipur. One Man math Bhai along with his wife Renukadevi, his young son and his two friends; Sures. Patel and Hasin Bhai were travelling in a Standard Car bearing Registration No. GJG 8222. The car was driven by Suresh Patel. An ambassador car came from behind when they were near Gordhanvilas. The driver of the ambassador car asked from side, which was given, thereafter the ambassador car stopped obstructing the road. The ambassador car was having registration D.L.J. No. 2573. Four persons alighted from the ambassador car. One was having the handle, the other was having a knife and the remaining two were shouting that they would shoot with revolvers. They pounded upon the standard car. They broke off the wind screen and window pans of the Standard Car and they dragged out its occupants. They were robbed of their belongings. The robbers also got the dicky of the Standard Car opened. The Attachee (suit-case) and other belongings of the occupants of the Standard Car were removed by them

and the same were placed in the ambassador car. They were seen wearing monkey caps. The robbers, there after, drove away their car. Manmath Bhai and his party then reached Udaipur in a truck. Thereafter a report Ex. P 25 was lodged at the police station, Surajpole, Udaipur. As the case related to the jurisdiction of police Station "Nai", the information was dispatched to that police station and formal FIR Ex. P 20 was drawn up at the police station Nai. The list of the stolen properties was also submitted by Manmath Bhai and his party. The superintendent of Police sent messages to his counterparts in the neighbouring districts. The S. P. Bundi also received such a message. He gave necessary directions to his subordinates. Shri S.N. Jairath, Addl. S.P. Bundi received this information in the evening on 14-1-1972 that an ambassador car was spotted on the Bijoliya Road at a distance of about 20 miles. Then he along with the police party proceeded towards that spot. He observed an ambassador car bearing registration No. CH 245, coming from the opposite side. That car was made to stop. Thereafter the car along with its three occupants were taken to the police station Bundi. The three occupants were Dinesh Chandra, Jagvir Singh and Gyan Singh. The car was subjected to search in the presence of motbirs and the seizure memo Ex. P 23 of the articles recovered from the car was prepared and the accused persons were also arrested. The accused persons were then taken into custody by the Udaipur police along with the stolen property. Necessary investigation was conducted and thereafter, challan was submitted against 5 accused persons. Challan was presented in the absence of accused Subhash. Four accused persons were committed for trial and ultimately, the case was transferred by the Sessions Judge to the court of Additional Sessions Judge, Udaipur. The accused Gyan Singh absconded and eventually the case proceeded only against the remaining three accused persons namely Dinesh Chandra, Jagvir Singh and Karamchand. The learned Additional Sessions Judge tried the three accused persons and ultimately acquitted all the accused persons of the offence u/s 395 IPC. He however, convicted the appellants for the offence u/s 412 IPC. The learned Additional Sessions Judge found that the dacoity was committed at about 10 p. m. on 13th Jan. 1972 at a distance of about 5 miles from Udaipur and Manmath Bhai, Renukadevi, Hasin Bhai and Suresh Bhai were the victims of dacoity. He further examined the question as to whether the accused persons committed dacoity or any of them participated in the impugned dacoity. He divided his considerations in two parts, one relating to direct evidence, and the other relating to circumstantial evidence. While dealing with the direct evidence, he considered the evidence of PW 1 Manmath Bhai, PW 9 Smt Renukadevi, PW 12 Hasin Bhai, PW 11 Suresh Bhai and concluded that on the strength of oral evidence, it is highly risky that the witnesses could identify the dacoits. While dealing with the circumstantial evidence, he considered the circumstance first, test identification parade, second, recovery of playing cards, third, purchase of petrol by the accused, fourth, recovery of number plates (article 14 & article 78), fifth, recovery of distribution caps of Standard Car, sixth, recovery of head light of the Standard Car and the door of Ambassador car, seventh, the recovery of woolen cap, eighth, the recovery of stolen goods from car No. CH 245, ninth,

arrest of accused Jagvir Singh and Dinesh with stolen goods while sitting in car No. CH 245. In connection with the test identification parade, the learned Sessions Judge found that when the witness could not have identified the dacoits, the evidence in the form of test identification parade loses its importance. The circumstance of recovery of playing cards was considered to be of no consequence. In respect of the third circumstance, it was found that the Ambassador car bearing registration No. CH 245 purchased the petrol on 13-1-1972 from Peadeep Automobile but with regard to the identity of the accused Jagvir Singh and Dinesh Chandra the statement of witness Narayanlal (PW 14) was not believed. As regard the recovery of the number plates, the statement of Babulal (PW 12) was not believed that Dinesh Chandra had come to him forgetting the plates painted but it was found as a fact, that the Ambassador car bearing registration No. CH 245 was brought to him and one of the inmates of that car had asked him to paint two number plates bearing registration No. DLJ 2573 and it was found that the Ambassador car No. CH 245 after changing of its number to DLJ 2573 was employed in committing the impugned dacoity. The circumstance with regard to the recovery of distribution cap was considered to be against Cyan Singh who was not facing trial as that cap was recovered at his instance. As regards the sixth circumstance, it was found that the recovery neutral and from this circumstance, it, cannot be ascertained as to who committed the dacoity. Similar conclusion was reached in respect of the recovery of woolen cap by Narendra Mohan CI Surajpole (PW 22) as the cap was found lying on the road. Remaining, two circumstances are most material circumstances. Both the circumstances were found as proved that the articles mentioned in the recovery memo (Ex. P 23) were recovered from the car CH 245 and the victims identified their belongings correctly before the Magistrate. The goods were found in Ambassador car CH 245, on 14-1-1972 at 10.30 p.m. Similarly, it was found proved that at the time of recovery of the stolen property from the said car, the accused persons Jagvir Singh and Dinesh Chandra were sitting in the car. This was an admitted case of both the accused persons that they were at Bundi on 14-1-1972 at the relevant time. This part of their case was not believed by the learned trial judge that they were coming about in Bundi for finding out "Dharmasala", as both the accused persons were found sitting in the Ambassador car with the different articles lying scattered around the two accused persons inside the car within 24 hours of the commission of dacoity. This presumption was also raised that they knew or had reason to believe that the property recovered from the Ambassador car was the subject matter of dacoity. In view of the aforesaid conclusions, the learned Sessions Judge acquitted the appellant of the offence u/s 395 IPC. He however, convicted them for the offence u/s 412 IPC and sentenced them as aforesaid, hence this appeal.

3. I have heard Shri Doongar Singh learned counsel for the appellants and Gautam Mal Bhandari Public Prosecutor for the State.

4. It may be stated that the appellants stand acquitted of the offence u/s 395 IPC and there is no State appeal, so the controversy is very much narrowed

down, it is to be seen as to whether the appellants have been rightly convicted of the offence u/s 412 IPC. In order to establish the offence u/s 412 IPC reliance has been placed by the learned Sessions Judge on the testimony of Shivanand Jairath, Additional S.P. Bundi PW 19 and the motbir witness Hiralal PW 24. While considering this circumstance under the eighth head the learned Sessions Judge observed that in the cross-examination, the statements of these witnesses could not be shaken although some inaccuracies on minor details did creep in their statements, but the facts stated by these witnesses are vibrating with truth. It was also observed that none of these witnesses has any malice against the accused persons. It may be stated that the statement of PW 19 Shri S.N. Jairath is very categorical. He stated that the articles recovered from the car were seized by him and the memo Ex 8 23 was prepared bearing his signatures A. to B. He has proved the articles Ex. 1 to Ex. 22 and Ex. 25 to 27 present in the court. Which were recovered vide Ex. P. 23 and according to him the recoveries were effected in the presence of two motbirs Hiralal and Janki Lal. The prosecution has produced Hiralal but has not produced Janki Lal. According to Shri Jairath recovery was not effected, when they stopped the car. The property was recovered at the police station. He came out with the reason that no motbir was available and it has already become night at that time so it was not considered proper to send for any motbir from Bundi. No doubt this discrepancy has occurred in the testimony of Jairath and the motbir as to when the stolen property was taken out from the car. According to Mr. Jairath it is incorrect that the ambassador car was seized in the presence of motbirs as referred to in Ex. P. 23 but he stated that the stolen property was taken out from the car after arrival of the motbirs. Hiralal on the other hand stated, that the stolen property was put in the Verandah after removing the same from the room. It was not taken out from the car in his presence. Although he has stated that Ex. P. 23 bears his signatures at Ka to Kha and this memo was read over to him and thereafter, he had signed it and the police people had correctly recorded the facts in the memo Ex. P. 23. If this part of his statement is correct, then what ever is recorded in Ex. P. 23 is correct and it can be taken that the stolen property was taken out from the car in his presence and the subsequent cross-examination version that it was put in the Verandah from the room, is incorrect. If later part of his statement is taken to be correct that the stolen property was put in the Verandah from the room in his presence, still there is no reason to disbelieve the testimony of the Additional S.P. Bundi, Shri S.N. Jairath. With regard to his version, his solitary statement inspires confidence and deserves to be acted upon and on the basis of his sole testimony, it can be found that the articles mentioned in Ex. P. 23 were recovered from the ambassador car CH 245 and further it can be found from his testimony that the appellants were found sitting in that car. It may be stated that the stolen property consisting of various items detailed by the trial judge was lying scattered inside the car and the stolen property was also found in the dicky. The ambassador car with the stolen property was found within 24 hours of the commission of the dacoity. In the test identification parade the stolen property was identified by the victims of the dacoity. These memos are Ex.

P. 2, Ex. P. 15 Ex. P. 16 and Ex. 17 proved by Shri M.K. Saxena (PW 23) so, considering the circumstance of proximity of time between commission of dacoity and recovery of property and the manner in which the stolen property was found lying scattered inside the car and identification of the property by the victims it has been rightly found by the learned Sessions Judge that the accused appellants knew or had reason to believe that the property which has been recovered from the car was the subject matter of dacoity and they were found in possession thereof The plea of alibi of Dinesh Chandra has been considered by the learned Session Judge. His presence on 12-1-1972 at the office on the basis of the attendance register was not believed by the learned Sessions Judge However his presence at Delhi on 13-1-1972 had been believed in view of the verification of the affidavit Ex. D 7 by the Sub-Divisional Magistrate. I need not examine this question, although it can be said that Ex. D 7 is not proved No one has identified the appellant Dinesh Chandra at the time of attestation of the affidavit, Sub-Divisional Magistrate has not been examined On the basis of mere production of the affidavit Ex. D 7, it cannot be found that Dinesh Chandra was present on 13-1-1972 at Delhi. So far as the conviction u/s 412 IPC is concerned, I need not consider his alibi of 13-1-1972 According to the statements of the accused persons, both of them were at Bundi on 14-1-1979 at the relevant time, which otherwise has also been proved by the statement of PW 19 and in the light of the proved facts and circumstances, in my opinion, the appellants have been rightly convicted of the offence u/s 412 IPC. Learned Counsel for the appellants however, submitted that the accused persons have remained in custody for about 2 years and 6 months. They are on bail. After a long lapse of 8 years it would not be proper to send them behind the bars. So their sentence may be reduced to the period their custody. The prayer appears to be reasonable.

5. Accordingly, this appeal is partly allowed conviction of the appellants is maintained, however, their sentence is reduced to the period of their custody. Their sentence of fine is remitted, they are already on bail so they need not surrender. Their bail bonds are discharged.